UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

1LT EHREN K. WATADA, Petitioner, vs. LT. COL. JOHN HEAD, Military Judge, Army trial Judiciary, Fourth Judicial District; LT. GEN. CHARLES JACOBY, Convening Authority, Ft. Lewis, Washington; Respondents.	NO. PETITION FOR A WRIT OF HABEAS CORPUS **Emergency Relief Requested**

Petitioner Ehren K. Watada, by through his attorney, James E. Lobsenz, states as follows:

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I. Parties.

1.1. First Lieutenant Ehren K. Watada is an officer in the United States Army. He is stationed at Ft. Lewis, which is located within the Western District of Washington. Lt. Watada is currently charged and facing court-martial at Ft. Lewis, Washington on charges of missing movement and conduct unbecoming an officer. The court-martial is scheduled to commence on October 9, 2007.

1.2. Respondent Head is the Military Judge presiding over the court-martial proceedings being held at Fort Lewis, Washington in the Fourth Judicial District of the Army Trial Judiciary. He is stationed at Ft. Lewis, which is located within the Western District of Washington.

1.3. Respondent Jacoby is the Convening Authority for the court-martial proceeding against Lt. Watada. He is stationed at Ft. Lewis, Washington, which is located within the Western District of Washington.

II. Jurisdiction.

2.1. The United States District Court has jurisdiction over this petition for a writ of habeas corpus pursuant to 28 U.S.C. §§ 2241 and 1331. Petitioner is in the custody of the United States Army and is subject to the restraints imposed upon him by the Convening Authority and the Military Judge presiding over his court-martial. Petitioner seeks relief on the ground that the current proceedings now pending against him are being maintained in violation of the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution.

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III. Venue.

3.1. Venue is proper in the Western District of Washington because the Petitioner and all Respondents are stationed at Ft. Lewis, which is within the Western District of Washington, and because the events at issue – his first court-martial trial, which ended with a declaration of mistrial over his objection, and the currently-scheduled second trial – have all taken place and are scheduled to take place within the Western District of Washington. Thus, the "restraint complained of" is occurring within this Court's territorial jurisdiction. 28 U.S.C. § 2241 (a).

IV. Procedural History.

4.1. On November 9, 2006, Lt. General James Dubik, the Convening Authority and the predecessor to Respondent Lt. General Charles Jacoby, approved the referral of three criminal charges against Petitioner Watada to a general court-martial. In Count 1, Petitioner was charged with Through Design Missing Movement Required in the Course of Duty (Article 87), alleged to have been committed on June 22, 2006. In Count 2, Petitioner was charged with One Specification of Conduct Unbecoming an Officer (article 133), alleged to have been committed on August 12, 2006. And in Count 3, Petitioner was charged with three Specifications of Conduct Unbecoming an Officer (Article 133) alleged to have been committed on June 7, 2006.

4.2. Trial commenced on these charges on February 5, 2007. Pursuant to a Pretrial Agreement, entered into and approved that day by the Military Judge, Specifications 2 and 3 of Count II were dismissed in exchange for Petitioner's entry into a Stipulation of Fact.

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4.3. Trial continued on February 6, 2007. The Government rested its case that afternoon.

4.4. When trial resumed on February 7, 2007, the Military Judge announced that he had discovered a problem with the Stipulation of Fact the parties had entered into, and which the Military Judge had approved. Counsel for both the Government and for Petitioner repeatedly advised the Military Judge that they did *not* see any defect or problem with the Stipulation of Fact, and did *not* see that any reason existed for setting aside that Stipulation.

4.5. Over the objection of both parties, the Military Judge set aside the Stipulation of Fact. The Military Judge then invited Counsel for the Government to either move to reopen or to move for a mistrial. Following a recess, Counsel for the Government made a motion for declaration of a mistrial. Counsel for Petitioner immediately objected and opposed the motion for a mistrial.

4.6. The Military Judge then immediately declared a mistrial, without considering any alternative procedure for continuing the trial with the panel of officers that had been hearing the case. The members of the court-martial panel were then dismissed.

4.7. Petitioner Watada subsequently discharged his previous civilian counsel and hired new civilian counsel to represent him.

4.8. Petitioner sought a ruling from the Army Court of Criminal Appeals on his claim that a retrial was barred by the Double Jeopardy Clause. On May 17, 2007, Petitioner filed a Petition for Extraordinary Relief in the Nature of a Writ of Prohibition in the Army Court of

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Criminal Appeals, and asked that Court to stay all proceedings in the military trial court pending appellate review.

4.9. On May 18, 2007, the Army Court of Criminal Appeals issued a temporary stay, prohibiting the court-martial trial from going forward until further order of the Court, but permitting the pending pretrial motions litigation to proceed.

4.10. On June 29, 2007, the Army Court of Criminal Appeals entered an Order stating that Petitioner had asked it to enjoin his upcoming court-martial on former jeopardy grounds without first moving to dismiss in the trial court, and that under those circumstances, his petition for extraordinary relief was denied. The temporary stay of the court-martial trial was dissolved on that date.

4.11. Taking note of the avenue for relief suggested by the Army Court of Criminal Appeals, on July 2, 2007, Petitioner filed a Motion to Dismiss on Double Jeopardy grounds in the trial court. That motion was argued in the trial court on July 6, 2007, and the Military Judge orally denied the motion on that hearing date. The Military Judge followed his oral ruling with a written ruling entered on July 11, 2007.

4.12. On July 26, 2007, Petitioner filed a Renewed Petition for Extraordinary Relief in The Nature of a Writ of Prohibition in the Army Court of Criminal Appeals, pointing out that the Double Jeopardy motion had now been presented and denied by the trial court. He also filed an Application for a Stay of Trial Proceedings on that same date, noting that the trial was scheduled to occur on October 9-12. 2007.

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4.13. On July 27, 2007, the Army Court of Criminal Appeals referred the renewed petition to Panel 2 of the Court for consideration.

4.14. On July 31, 2007, the Government filed its Initial Response in Opposition to the Renewed Petition for Extraordinary Relief.

4.15. On August 2, 2007, the Army Court of Criminal Appeals directed the Government to file an authenticated copy of the Record of Trial and to submit it to the Court.

4.16. On August 9, 2007, Petitioner filed in the Army Court of Criminal Appeals a response to the Government's brief in opposition to his Renewed Petition.

4.17. On August 27, 2007, Petitioner filed in the Army Court of Criminal Appeals a Motion for an Expedited Ruling on his application for a stay of the court-martial trial.

4.18. On August 28, 2007, the Army Court of Criminal Appeals denied the Renewed Petition for Extraordinary Relief and denied the Application for a Stay of Trial Proceedings. The Army Court of Criminal Appeals considered and addressed the merits of Petitioner's claim, and in a brief five-sentence Order, rejected the claim, finding no abuse of discretion by the Military Judge who declared the mistrial over Petitioner's objection.

4.19. On September 17, 2007, Petitioner sought review of his Double Jeopardy claim by the United States Court of Appeals for the Armed Forces. On this date, he filed Petitioner's "Writ Appeal Petition for Review of the Army Court of Criminal Appeals Decision on his Renewed Petition for Extraordinary Relief." On this same date, he also filed an Application for

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Immediate Stay of Trial Proceedings in the United States Court of Appeals for the Armed Forces.

4.20. On September 24, 2007, the Government filed, in the United States Court of Appeals for the Armed Forces, its response in opposition to Petitioner's Application for a Stay of Court Martial Proceedings.

4.21. On September 26, 2007 the Government filed, in the United States Court of Appeals for the Armed Forces, its response in opposition to Petitioner's Writ Appeal Petition for Review of the Army Court of Criminal Appeals Decision

4.22. On September 27, 2007, Petitioner filed his reply brief in support of his Application for Immediate Stay of Court-Martial Proceedings in the United States Court of Appeals for the Armed Forces.

4.23. On October 3, 2007, Petitioner filed his reply brief in support of his Writ Appeal Petition.

4.24. As of the close of business (i.e., 5:00 p.m. EDT) on October 3, 2007, the Court of Appeals for the Armed Forces has made no ruling on either the Petitioner's Application for Immediate Stay of Court-Martial Proceedings, or on his Writ Appeal Petition for Review of Army Court of Criminal Appeals Decision on Petition for Extraordinary Relief.

4.25. Because October 8, 2007 is a federal holiday, the last judicial business day before the scheduled start of Petitioner's court-martial trial is Friday, October 5, 2007.

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V. Restraint

5.1. Petitioner's term of service as an officer expired on December 4, 2006. However, because court-martial charges were pending against him at that time, he was held over and has not been discharged from military service. Thus, his continued military service is being compelled by the United States Army. Petitioner is being held to answer to the referred criminal charges now pending against him in the Fourth Judicial Circuit of the Army Trial Judiciary.

VI. Grounds for Relief.

6.1. Petitioner contends that convening the currently-scheduled court-martial trial, which is set to commence on October 9, 2007, will violate the prohibition against Double Jeopardy, which is set forth in the Fifth Amendment to the United States Constitution, because he was previously tried on these charges and a mistrial was declared, over his objection, without there being the requisite manifest necessity for such declaration.

VII. Exhaustion.

7.1. Petitioner has presented his claim to all the Article I Courts in the military court system. His claim was presented to the trial court (the Fourth Judicial Circuit of the Army Trial Judiciary), to the Army Court of Criminal Appeals, and to the United States Court of Appeals for the Armed Forces.

VIII. Evidentiary Hearing Unnecessary

8.1. No evidentiary hearing need be held in this Court in order to determine the merits of this Petition. This Court need only review the record that was made of Petitioner's first trial.

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IX. Emergency Relief Requested

9.1. Petitioner, 1LT Ehren K. Watada, prays that this Court issue an Emergency Stay that enjoins Respondents from proceeding with the court-martial trial now scheduled to commence on October 9, 2007, and to continue this Stay in effect until this § 2241 habeas corpus petition proceeding is concluded.

X. Relief Requested.

Wherefore, Petitioner Ehren K. Watada, prays that this Court take the following action:

10.1. Require Respondents to file an Answer to the Petition, specifically admitting or denying the allegations set forth in Petitioner's Petition.

10.2. Direct the filing of a complete and accurate record of the proceedings conducted with respect to Petitioner's first trial, including all proceedings held in connection with the declaration of mistrial over Petitioner's objection.

10.3. Allow Petitioner sufficient time to brief the issues of law raised by this Petition.

10.4. Issue a Writ of Habeas Corpus releasing Petitioner from all restraint imposed by the pending court-martial charges, and declaring any trial on such charges to be barred and prohibited by the Double Jeopardy Clause of the Fifth Amendment.

10.5. Grant such other and further relief as may be appropriate.

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DATED this 3rd day of October, 2007.

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